

House Commerce Committee Amendment #1

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AMEND Senate Bill No. 1117 House Bill No. 1030

by deleting Section 2 in its entirety and by substituting instead the following:

Section 2. Tennessee Code Annotated, Title 45, Chapter 2, Part 14, is amended
by deleting the Part in its entirety and by substituting instead the following:

Section 45-2-1401. Short title. This Part shall be known and may be cited
as the "Bank Structure Act."

Section 45-2-1402. Definitions. As used in this Part, unless the context
otherwise requires:

(1) "Appropriate regulatory officials" means:

(A) For any national bank, the Comptroller of the Currency
of the United States.

(B) for any Tennessee-chartered bank, the Commissioner
of Financial Institutions, the Federal Deposit Insurance
Corporation, or the Board of Governors of the Federal System (if
the Bank is a member Bank)

(2) "Bank" means any company, as hereinafter defined, authorized
to do a banking business subject to the laws of this or any other
jurisdiction;

(3) "Bank holding company" has the meaning set forth in Section
(a)(1) of the Bank Holding Company Act of 1956, as amended (12 U.S.C.
Section 1841 (a)(1));

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(4) "Company" has the meaning set forth in Section 2(a)(1) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. Section 1841(b));

(5) "Control" has the meaning set forth in Section 2(a)(2) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. Section 1841(b));

(6) "De novo acquisition" means acquisition of shares of a bank prior to the time it is authorized to commence operations;

(7) "Home State" means:

(A) With respect to a national bank, the state in which the main office of the bank is located;

(B) With respect to a state bank, the state by which the bank is chartered; and

(C) With respect to a bank holding company, the state in which the total deposits of all banking subsidiaries of such company are the largest on the later of:

(i) July 1, 1966; or

(ii) the date on which the company becomes a bank holding company under the Federal Bank Holding Company Act of 1956, as amended;

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(8) "Interim bank merger" means the technique by which a new bank charter is obtained solely for the purpose of merging an existing bank into the bank for which the charter is sought, or solely for the purpose of merging the bank for which the charter is sought into an existing bank; the technique is a transaction intended to qualify the exchange of stock between the bank holding company and the stockholders of the existing bank as a reorganization within the meaning of Section 268(a) of the Internal Revenue Code of 1986, as amended (26 U.S.C. Section 368(a));

(9) "Out-of-State bank" or "out-of-state bank holding company" means a bank or bank holding company which Tennessee is not the home state of such bank or company; and

(10) "Tennessee Bank" or "Tennessee bank holding company" means a bank or bank holding company for which Tennessee is the home state of such bank or company.

Section 45-2-1403. Prohibition and Exceptions. (a) Except as otherwise provided in Subsection (b) hereof, (i) no bank holding company acting directly or indirectly shall acquire control of, merge, or consolidate with a Tennessee bank which has not been in operation for at least five (5) years; and (ii) no out-of-state

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bank acting directly or indirectly shall acquire control of, merge, or consolidate with a Tennessee bank which has not been in operation for at least five (5) years.

(b) Subsection (a) hereof shall not prohibit the following transactions:

(1) An interim bank merger for the purpose of acquiring control of a Tennessee bank which has been in operation for at least five (5) years, but the requirement of such period of operation shall not apply if the bank holding company owned more than fifty percent (50%) of the shares of the bank prior to the time of merger by reason of the purchase of such shares in a de novo acquisition;

(2) Acquisition of control, merger or consolidation of any Tennessee bank in financial difficulty, as determined by the appropriate regulatory officials, provided such officials determine that such acquisition will protect the stockholders and depositors by maintaining financial soundness;

(3) Acquisition of shares of stock given as collateral security upon a debt contracted in good faith, provided that (i) such acquisition is necessary to prevent loss upon such debt; (ii) the making of such loan and the acquisition of such shares are in

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the ordinary course of business and not as a means of circumventing this Part; and (iii) the shares so acquired shall be sold or disposed of at public or private sale within a period of one (1) year from the acquisition thereof or by such later time as the appropriate Regulatory officials may deem required to permit the disposition of such shares without undue risk or loss;

(4) Acquisition of shares of stock by a bank acting solely in a fiduciary capacity in the ordinary course of its trust business and not for the purpose of circumventing this part; and

(5) Acquisition of control of a bank by a company which will become a Tennessee bank holding company solely by reason of such acquisition.

Section 45-2-1404. Acquisition by holding company prohibited. A bank holding company, or bank shall be prohibited from acquiring any bank in Tennessee if the bank or bank holding company (including all insured depository institutions which are affiliates of the bank or bank holding company), upon consummation of the acquisition, would control thirty percent (30%) or more of the total amount of the deposits of the insured depository institutions in Tennessee. For purposes of this part "deposit" has the meaning set forth in section 3(l) of the Federal Deposit Insurance Act, 12 U.S.C. Section 1813 (l).

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Section 45-2-1405. Power of commissioner. The commissioner has the power to establish rules and regulations to carry out the legislative purposes of this part.

SECTION 3. Tennessee Annotated Section 45-2-614 is amended by deleting Subsection (f) thereof in its entirety and substituting instead the following:

(f) No Tennessee bank or branch office or facility thereof which conducts the following transactions as an agent on behalf of another Tennessee bank, whether or not the Tennessee banks are affiliated through common control or otherwise, and no bank that is a subsidiary of a bank holding company or branch office or facility thereof which conducts the following transactions on behalf of another bank that is a subsidiary of the same bank holding company, shall be deemed a branch of the principal bank: receipt of deposits, renewal of time deposits, closing of loans, servicing of loans, and receipt of payments on loans and other obligations. The commissioner may establish by rule additional types of agency transactions, the performance of which shall not cause the agent bank to be deemed a branch of the principal bank. With respect to such agency relationships to which a Tennessee-chartered bank is to be a party, the commissioner may establish rules requiring receipt of notification, or approval, by the commissioner before such agency transactions are conducted. For the

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purposes of this subsection, "Tennessee bank" and "bank holding company" shall have the meanings set forth in T.C.A. Section 45-2-1402. SECTION 4 SECTION 4. Tennessee Code Annotated Section 45-2-614 is amended by deleting in its entirety and substituting instead the following:

Section 45-2-614. Branch banking.

(a) Any Tennessee-chartered bank may establish or otherwise acquire and maintain branch office, branch banks and other branch facilities for the conduct of its banking business at any location in Tennessee and, except as may be prohibited by applicable law of other jurisdictions, at any other location.

(b) No branch, branch office or other branch facility at which deposits may be accepted shall be established by a Tennessee-chartered bank until approved by the commissioner. In the event such application is disapproved and the applicant feels aggrieved, the applicant may have a review by certiorari as provided in title 27, chapter 9. In the event the commissioner fails to approve or disapprove such application within ninety (90) calendar days after the submission thereof, such application shall be deemed to have been approved by the commissioner.

(c) A branch office, branch bank, or other branch facility shall not be established or acquired in Tennessee by any bank, except: (i) a

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Tennessee-chartered bank, (ii) a national bank which has its main office located in this state, or (iii) a bank which merges or consolidates with a bank described in clause (i) or (ii) hereof. This Subsection shall not be construed to prohibit the surviving or resulting bank following a merger or consolidation referenced in clause (iii) hereof from establishing and acquiring additional branch office, branch banks, and other branch facilities in this state.

(d) No Tennessee bank or branch office or facility thereof which conducts the following transactions as an agent on behalf of another Tennessee bank, whether or not the Tennessee banks are affiliated through common control or otherwise, and no bank that is a subsidiary of a bank holding company or branch office or facility thereof which conducts the following transaction on behalf of another bank that is a subsidiary of the same bank holding company, shall be deemed a branch of the principal bank: receipt of deposits, renewal of time deposits, closing of loans, servicing of loans, and receipt of payments on loans and other obligations. The commissioner may establish by rule additional types of agency transactions, the performance of which shall not cause the agent bank to be deemed a branch of the principal bank. With respect to such agency relationships to which a Tennessee-chartered bank is to be a

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party, the commissioner may establish rules requiring receipt of notification, or approval, by the commissioner before such agency transactions are conducted. For the purposes of this subsection, "Tennessee bank" and "bank holding company" shall have the meanings set forth in T.C.A. Section 45-2-1402.

SECTION 5. Tennessee Code Annotated, Title 45, is amended by adding as a new section the following:

Section _____. As used in this section:

(a)(1) "Depository institution" means:

(A)(i) an insured bank as defined in Section 3 of the Federal Deposit Insurance Act (12 U.S.C. Section 1813).

(ii) a mutual savings bank as defined in Section 3 of the Federal Deposit Insurance Act (12 U.S.C. Section 1813);

(iii) an insured credit union as defined in Section 101 of the Federal Credit Union Act (12 U.S.C. 1752);

(iv) a member as defined in Section 2 of the Federal Home Loan Bank Act (12 U.S.C. 1422); a savings association as defined in Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) which is an insured depository institution as defined in such Act; or

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(vi) an association or entity which is wholly owned by or
which consists only of institutions referred to in clauses (i) through
(v); and

(B) is domiciled in the State of Tennessee, or has a branch
lawfully doing business in Tennessee pursuant to the provisions of
this Act.

(2) "Electronic cash dispensing device" means an electronic
device other than a telephone operated by a consumer, through which a
consumer may obtain cash by means of initiating an electronic fund
transfer instruction to the consumer's depository institution to debit the
consumer's deposit account. For purposes of this Act, the term "electronic
cash dispensing device" includes, but is not limited to, automated teller
machines.

(b) Only a depository institution, or an affiliate thereof, may own, establish
or alone or, in combination with other persons, operate one or more electronic
cash dispensing devices located or to be located in this state. Notwithstanding
the foregoing, no person shall be deemed to own, establish, or operate an
electronic cash dispensing device solely because such device is located on the
premises of such person and such person received bona fide lease or rental
payments, in the form of transaction fees or periodic payments, from the

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depository institution or wholly-owned subsidiary thereof which owns, established and operates such device.

SECTION 6. Nothing herein shall be deemed or construed so as to: (i) authorize or permit prior to June 1, 1997, merger or consolidation of any bank having its home state, as defined hereinabove in Section 2, in Tennessee with or into any bank which does not have its home state in Tennessee; or (ii) authorize or permit, whether before, on, or after June 1, 1997, a bank which does not have its home state in Tennessee to establish or acquire a branch in Tennessee by any means other than merger or consolidation, on or after June 1, 1997, of such bank with or into a bank having its home state in Tennessee.

SECTION 7. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be give effect without invalid provision of application, and to that end the provision of this act are declared to be severable.

SECTION 8. Section 1 - 3 of this Act shall take affect on September 29, 1995; Section 4 shall take effect on June 1, 1997; and all other sections shall take effect upon becoming a law, the public welfare requiring it.